



STATE OF WASHINGTON
WASHINGTON STATE BOARD OF HEALTH
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September 8, 2004

TO: Washington State Board of Health Members

FROM: Carl Osaki, Board Member

**RE: HOMELESS SHELTER TASK FORCE RECOMMENDATIONS FOR
REGULATION OF SHELTERS AS TRANSIENT ACCOMMODATIONS**

Background and Summary

In 2001, the Board announced it was considering changes to chapter 246-360 WAC, the transient accommodation (TA) rule. [RCW 70.62.210](#) defines a transient accommodation as “any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.” (For more information, see material under Tab 10.)

An issue emerged during the rule review about whether homeless shelters should be regulated as transient accommodations. Legal advice provided to the Department of Health (DOH) holds that the TA statute and Board rules mean that homeless shelters that have three or more sleeping rooms and offer lodging for periods of less than 30 days are transient accommodations subject to regulation. Many shelters do not currently meet this definition, but a significant number do. Attempts to identify the number of homeless shelters in the state that fit the TA definition were inconclusive.

Operators of homeless shelters have argued: (1) they should not be regulated because they are not-for-profit service organizations committed to clients’ well-being; (2) it was not the intent of the Legislature that they should be covered by the TA statute; (3) many are already regulated and inspected by the federal and state agencies; (4) rules written for commercial lodging facilities are inappropriate for shelters; (5) as marginally funded organizations, shelters cannot afford the fees or compliance costs. Their greatest concern was that regulation would reduce the number of beds and force more people to live on the streets, where health risks from violence, exposure to the elements and other factors would outweigh the health risks from staying in a substandard facility. The state Department of Community, Trade and Economic Development (CTED) also asked DOH to exempt homeless shelters from any proposed TA rules.

DOH twice sought informal opinions on this issue the Office of the Attorney General. According to those opinions, SBOH and DOH are obligated by statute to regulate homeless shelters that meet the statutory definition of transient accommodations. There is no indication in the legislative record that the Legislature intended to exclude homeless shelters.

Additionally, SBOH and DOH policy staff questioned the advisability of withdrawing state protections from a vulnerable group simply because they cannot afford commercial lodgings. Other agencies’ standards did not seem to adequately address public health concerns.

SBOH and DOH staff members, working with shelter operators and CTED, explored a wide variety of policy options over the course of several months. Ultimately, they decided to convene a broad-based Homeless Shelter Workgroup to examine regulatory issues related to homeless shelters. That group met three times in the fall of 2003 and reached agreement on a set of recommendations to bring to the Board. In brief, the group is recommending that the Board and DOH develop a section or chapter of rules specific to homeless shelters, that the specific rules contain a general and basic set of standards, that those standards apply to all homeless shelters regardless of the length of stay, that shelters be inspected when there is a complaint or other cause for concern, that state and local public health agencies retain clear regulatory oversight, and that reduced fees be assessed based on the need to register shelters and respond to complaints, not on the need to support a survey program.

For today's meeting, I have asked Craig McLaughlin of the Board's staff to review the history of this process and some of the relevant policy issues. I have asked Gary Bennett, Director of Facilities and Services Licensing for DOH, and Steve Moss, president of the Board for the Washington State Coalition for the Homeless, to present the recommendations of the Homeless Shelter Task Force.

Recommended Board Action

This is a report to the Board. No action is necessary.

Discussion

RCW [70.62.240](#) requires, "The board shall adopt such rules as may be necessary to assure that each transient accommodation will be operated and maintained in a manner consistent with the health and safety of the members of the public using such facilities." Transient accommodations are also mentioned in [RCW 43.20.050](#) as one of the public facilities for which the Board shall adopt "rules controlling public health related to environmental conditions."

[RCW 70.62.210](#) defines a transient accommodation as "any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests."

In 2001, DOH conducted a review of [chapter 246-360 WAC](#), the transient accommodations rule, as required by the Governor's executive order on regulatory improvement. DOH identified several issues in the current rule that needed to be updated or revisited from a policy standpoint. One of these was the need to address unique circumstances for homeless shelters. DOH came before the Board at its September 24, 2001 meeting and asked the Board to issue a CR-101, Preproposal Statement of Inquiry. It did so on Dec. 17, 2001 ([WSR 02-01-084](#)).

The Department of Health (DOH) assembled a "TA Roundtable" to assist in the development of new rules. It then drafted possible revisions and held stakeholder workshops to discuss the draft in June 2003. During this phase of the rule development process, a representative of the Office of Community Development, which is now part of CTED, requested that "crisis shelters" be exempted from the TA rule. CTED argued, "Shelters will continue to be governed by local health and safety regulations, and funding source (CTED, HUD, county, city) rules and monitoring efforts." It noted that RCW 43.63A.650 states that it "shall be the principal state department responsible for...evaluating the operations and accomplishments of other state departments and agencies as they

affect housing.” Operators of homeless shelters also said that they should be exempted from the TA rules for a variety of reasons.

The TA rules, both currently and in the proposed draft that the Board will hold a hearing on today, specifically mention “crisis shelters” as one of the types of facilities regulated by the rule. “Crisis shelters” are currently defined as “a transient accommodation providing emergency or planned lodging service to a specific population, for example homeless families or relatives of individuals receiving hospital treatment, for periods of less than one month at a permanent physical location.” Domestic violence shelters are excluded by statute. Transitional housing, which often serves homeless families, is excluded by rule because it offers lodging for more than a month. The one-month threshold for determining whether lodging is temporary exists in rule, not in statute.

CTED and shelter operators suggested it was never the intent of the Legislature to include crisis shelters. DOH sought an opinion on this issue in 1988 and again in 2002. Both opinions are public and the opinions offered were consistent. In an April 1, 2002 memorandum, Assistant Attorney General Karen Ann Jensen wrote, “In my opinion, FSL can not merely make a decision not to license a category of facility that meets the WAC definition of a ‘transient accommodation.’”

She did, however, say that the Department had some discretion about prosecution of unlicensed activity and could be selective about enforcement in light of its limited resources. She also specifically looked at colloquies and other records that might indicate legislative intent and found nothing to suggest that the Legislature meant to exclude homeless shelters.

Enforcement has been selective and inconsistent. As CTED noted, “Currently only about 30 of the over 200 emergency shelters in the state are licensed. Although OCD has been operating an extensive emergency shelter coordination, finding, and monitoring effort since 1984, no one in the agency, or any of its advisory boards had learned of this regulation until the Spring of 2000.” Shelters have been very confused about whether licensing was an existing requirement or a new proposal and which of them the rules required to be licensed.

DOH made an attempt to identify how many homeless shelters exist in the state and how many would meet the TA definition. No one was able to find a complete listing of shelters, although CTED’s estimate seems accurate. In October 2003, DOH developed a survey about the TA rules that CTED mailed to 170 homeless shelters. It also included a self-assessment to determine whether a particular shelter would need to be licensed. Twenty-eight responded; of these, 14 felt they would meet the definition of a transient accommodation.

CTED maintained that shelters removed from the TA rule “will continue to be governed by local health and safety regulations, and funding source (OCD, HUD, county, city) rules and monitoring effects.” Shelters said that having to endure repeated inspections and surveys posed an administrative burden for overworked shelter staff. Shelters that receive money from the Washington State Housing Trust Fund are inspected and rated on a “Housing Safety Standards Inspection Checklist.” Shelters receiving funding from the U.S. Department of Housing and Urban Development (HUD) must meet “Uniform Physical Conditions Standard.” Both CTED and shelter operators said the “additional layer of regulation” was unnecessary and pointed out that the rules seemed to be written with hotels, motels and other commercial lodging facilities, and did not apply reasonably to homeless shelters. Shelters added that the license fee, which could run as high as

\$600 a year depending on the size of the facility, was an economic burden. Washington law requires that regulatory programs, including the TA program, be self-supporting.

Individual operators spoke about seeking a legislative exemption, and the Board received letters from state and local policy makers concerned about what some perceived as a new effort to license and regulate shelters that would force some facilities to close.

The overarching concerns throughout most of these discussions was that notion that these rules, if enforced, would create such an administrative and financial burden on shelters that it would force some to close and force others to reduce the numbers of beds. Since there are more homeless people than beds available, more people would have to live in places where they were exposed to health risks from violence, disease, and the natural elements.

Throughout the latter part of 2002 and the early part of 2003, DOH and Board staff seriously explored, with CTED and shelter operators, a number of policy alternatives. Each had problems:

- **Exempt shelters from the rules.** This did not appear to be a legally viable option.
- **Support a legislative bill exempting shelters from the rules.** SBOH and DOH staff believed that homeless people deserve a level of protection comparable to that afforded people that can pay for lodging. The homeless are a vulnerable population, as demonstrated by the tuberculosis outbreak among homeless people in the Seattle area. Facilities serving vulnerable populations, like the elderly, in this state are almost universally regulated by the state. CTED and HUD inspections do not apply to facilities that don't receive state or federal funds and do not adequately address public health issues.
- **Adopt a policy of selective enforcement.** This did not seem to address the statute and did not offer protection for clients of homeless shelters. It would allow a confusing situation to continue by disregarding it, and would not remove shelters from the legal obligations.
- **Deem shelters that comply with HUD, CTED or peer-inspection standards to be in compliance.** "Deemed status" is only an option when the standards enforced by another entity are comparable. DOH and SBOH staff reviewed the CTED and HUD standards and felt they did not adequately address public health concerns. CTED was not interested in expanding the scope of its inspection program. Programs where shelters inspect and accredit other shelters are only available in a few areas of the state.
- **Writing a special WAC section specific to homeless shelters.** The proposed WAC has a section specific to rustic resorts specifying which sections apply. Sections not specified do not apply. Efforts to develop such a section for homeless shelters were not initially successful, largely because shelters vary greatly in the types of facilities, programs and services they provide. It was difficult to identify a subset of the TA rules that should be applied to all shelters. Continuing to work on this would have significantly delayed the rest of the rules process.

In fall 2003, DOH and the Board jointly convened a shelter workgroup to see if it was possible to reach agreement on a regulatory framework for homeless shelters. The notion was that the workgroup's efforts would not delay the current TA rule revision. Until the policy issues around shelters were resolved, DOH would not pursue routine licensing requirements and enforcement for homeless shelters.

Participants included representatives of several state agencies (DOH, CTED, Department of Veterans Affairs, Department of Social and Health Services), Public Health—Seattle & King County, homeless advocacy groups, homeless shelters, and a formerly homeless man who now works for a shelter. The group met three times and emerged in November 2004 with consensus on a recommendation it would make to the Board.

Many participants felt the Board and DOH should not regulate shelters, but they agreed on the strategy they would like to see public health agencies adopt if they felt regulation was necessary. I have asked representatives from DOH and the Washington State Coalition for the Homeless to present those recommendations to the Board today. The specifics of the recommendations are in the attached slide presentation. The broad outline is that shelters would have to register and would be subject to enforcement action by state and local public health, but they would not go through routine inspections and enforcement would be complaint-driven. DOH would adjust fees downward to reflect the costs of this scaled-back program. DOH and SBOH would work with the workgroup or a similar group to develop standards for shelters would be broad, basic and not highly prescriptive. The group agreed that if the standards are as fundamental as the group envisions, they should apply to all shelters that meet the statutory definition of a transient accommodation, not just to shelters where clients stay for less than one month.

This is a recommendation from the workgroup, which included Board staff and DOH staff. I encourage the Board to consider and discuss it. SBOH staff consulted with me during this process in my capacity of Board sponsor for the TA rules. Staff also consulted with then-Chair Linda Lake and with Board Member Tom Locke in his capacity as a representative of local health. But it has not been formally endorsed by senior staff at DOH or by individual Board members. Nonetheless, these recommendations represent a consensus proposal from a group of people who gave this difficult issue much serious thought. It also has some benefits I would like the Board to consider:

- While it might weaken protections and eliminate routine inspections, it would also extend protections to all shelters that fit the TA statutory definition, regardless of funding base or length of stay. This should significantly increase the number of shelters expected to comply with these standards.
- It would clarify the current confusion over which shelters must be licensed.
- It would maintain clear authority for state and local public health agencies to intervene when a problem is identified, while recognizing that many shelters (probably a significant majority) are scrutinized regularly by other agencies.
- It would allow flexibility for shelters while setting a floor for what is required of them, and therefore could be applied to shelters that offer anything from a long-term apartment stay for a family to a place to sleep on the floor of a government building during very cold nights.
- For shelters that would have to be licensed under the current system, this new proposal would reduce administrative and financial burdens.